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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/578,202	01/16/2007	Roland Knauer	MY-31PCT	5212
40570	7590	08/19/2009	EXAMINER	
FRIEDRICH KUEFFNER			BAINBRIDGE, ANDREW PHILIP	
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NEW YORK, NY 10017			ART UNIT	PAPER NUMBER
			3754	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/578,202	KNAUER ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	ANDREW P. BAINBRIDGE	3754	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-14 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_ is/are allowed.
- 6) Claim(s) 1-14 is/are rejected.
- 7) Claim(s) \_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. ____ .
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)	5) <input type="checkbox"/> Notice of Informal Patent Application
Paper No(s)/Mail Date <u>5/4/2006</u> .	6) <input type="checkbox"/> Other: ____ .

## DETAILED ACTION

### ***Claim Objections***

1. Claims 1-14 are objected to because of the following informalities: There are many examples of language that can be interpreted to NOT be positive recitations of the claim limitations including “wherein, whereas, and where”. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. **Claims 11-14 are rejected under 35 U.S.C. 112, first paragraph,** because the specification, while being enabling for any of the four embodiments as drawn to figures 1, 2-3, 4-5, and 6-7 respectively, does not reasonably provide enablement for a *combination* of the Figure 1 embodiment and the Figures 4-5 embodiment and the Figures 6-7 embodiment together respectively, as suggested in claim 1 which claims a “hood” but the dependent claim 11 claims a “ring piston” 32 (embodiments Figure1 and Figures 4-5 combined inappropriately); or when claim 1 again claims a “hood” but the dependent claim 12 claims a “restoring spring” (embodiments Figure 1 and Figures 6-7 combined inappropriately). The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make the invention commensurate in scope with these claims such that it has the features of both figure 1 and figures 4-5, and figures 6-7 respectively, which is a different and contradictory

embodiment. Another way to explain this rejection is to simply point out that an invention can not embrace these two sets of embodiments simultaneously.

4. In light of the above, the examiner cannot reasonably prior art to these claims. The examiner's failure to apply prior art to claims 11-14, should not be construed as an indication of allowable subject matter.

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. **Claims 1-14 are rejected under 35 U.S.C. 112, second paragraph**, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

7. The claims are generally narrative and indefinite, failing to conform with current U.S. practice. They appear to be a literal translation into English from a foreign document and are replete with grammatical and idiomatic errors.

8. Examples of language issues include but are not limited to: "is designed to" (claim 1, line 5), "by means of, for example" (claim 1, line 7), "lies in a "floating" manner" (claim 1, line 15), "when the movement of the hood causes" (claim 1, bottom of page 1), "by way of the container" (claim 6, lines 3-4). These choices of language are at worst vague and indefinite language which fail to provide the sufficient breadth and scope to the claims or at best are simply poor selections of phrases that are open to a variety of interpretations, and thereby present an opportunity for an Examiner to give them a broader interpretation than the inventor intended.

***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

11. **Claims 1-6 and 10 are rejected under 35 U.S.C. 103(a)** as being unpatentable over US 4,564,130 (Eulenburg) in view of US 4,429,813 (DeFreitas).

11. Eulenburg in figure 2 teaches a container 5 filled with paste-like product (col. 1, lines 1-10) with a flexible circular disc 19 made of a highly elastic plastic (col. 6, lines 25-68) that at rest sits on a lower pump part 9 seated in the opening of the container 5 (see figure 2) and below an upper pump part 2' that is threadably connected to the container 5 that is set in the opening of the container (see figure 2) and closes off the discharge channel 3 which is part of the upper pump part 2 which comes down to directly on top of the valve disk 19, but during actuation of the flexible actuation hood 4 puts pressure on the pump chamber 7 and deforms the disk 19 so that the pump chamber's contents 7 are dispensed through the channel 3, and as the hood 4 returns

to its natural shape, the disk 19 deforms again under pressure to allow more material to enter the pump chamber 7.

Eulenburg does not teach a flat valve disk with no through holes that is part of a pump chamber with an upper pump part and a hood that is movable along with a discharge channel that extends laterally from the container, nor does it teach the use of rubber for the valve disk, with a bellows-like corrugation in the outer edge of the valve disk

DeFreitas in figures 1-5 discloses a dispenser pump (see figure 1) to dispense fluid 7 from a container 6 with an upper pump part 24, 40-43 with a movable hood 43 which draws fluid through the suction opening 40 into the laterally extending discharge channel 19, the lower pump part 45-46 having suction openings 2 and a flat valve through hole free disk 4 that has no fasteners and is designed to downwardly move to close off the intake ducts 2 when the movable hood 43 is actuated 24, and the valve disk 4 floats upwardly 45 to allow the intake of replacement fluid in the hood for the next dispensation (col. 5, lines 8-52). It would be obvious to one of ordinary skill in the art to adapt DeFreitas to Eulenburg because DeFreitas teaches a way to dispense the contents laterally and also provides a way to utilize a simple to manufacture round through hole free valve disk.

Although Eulenburg does not explicitly teach the use of corrugated bellows-like valve disks nor does it teach the use of rubber, these are examples of a designer's obvious design choice. It would be obvious to one of ordinary skill in the art to choose rubber for a flexible valve disk because rubber is well known to provide good seals and

flexibility in a variety of valve situations, and the use of corrugated bellows-like shaped valve disks is also well known in the art to provide an extra level of lateral flexibility to a valve so that a seal is not lost over time.

12. **Claim 7 is rejected under 35 U.S.C. 103(a)** as being unpatentable over Eulenburg in view of DeFreitas as applied in claim 6, and further in view of US 4,174,069 (Grogan).

13. Eulenburg in view of DeFreitas as applied in claim 6 has all of the elements of claim 7 except for the hood having a stop on the upper inside to limit the axial displacement of the hood. Grogan in figure1 teaches a collapsible hood 13 with a protuberance (see figure 1) that serves as a stop to reduce the deformation of the hood element. It would be obvious to one of ordinary skill in the art to adapt Grogan to the Eulenburg-DeFreitas combination because the over actuation of a flexible element like the actuating hood of Eulenburg could otherwise be a major source of product failure.

14. **Claims 8-9 are rejected under 35 U.S.C. 103(a)** as being unpatentable over Eulenburg in view of DeFreitas as applied in claim 6, and further in view of US 4,512,246 (Chappel et al.).

15. Eulenburg in view of DeFreitas as applied in claim 6 has all of the elements of claims 8-9 except for a safety cap that is held to the upper pump part by a set of ring beads that also control the limits of its actuation, and the upper pump part is connected by a hinge to a swinging cover. Chappel in figures 1-13 teaches a safety cap 82 that has a set of matching ring beads 90 that control the range of actuation of the safety cap and the pump 52 is connected to a swinging cover 42 by a hinge 42 (see figure 4). It

would be obvious to one of ordinary skill in the art to adapt Chappel to the Eulenburg-DeFreitas combination because a safety cap can only increase the lifespan of the flexible hood actuating button and a swinging cover offers a way to provide further protection to a delicate pump with many parts, while preserving the ease of disassembly.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ANDREW P. BAINBRIDGE whose telephone number is (571)270-3767. The examiner can normally be reached on Monday to Thursday, 9:30 AM to 8:30 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on 571-272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/A. P. B./  
Examiner, Art Unit 3754

/Kevin P. Shaver/  
Supervisory Patent Examiner, Art  
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